

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Dormant Insecticide Contamination Prevention
DPR Regulation No. 05-004

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6960 and amend section 6000 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to the use of dormant spray insecticides and focuses on mitigating surface water contamination.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on August 1, 2005. Comments regarding this proposed action may also be transmitted via e-mail to <dpr05004@cdpr.ca.gov>, or by facsimile at (916) 324-4088.

A public hearing is not scheduled; however, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pesticide applications to orchard crops during winter--when the trees are dormant--kills diseases and over-wintering arthropod pests (such as scales and mites). Treatment is most effective during this time of the year because there are no leaves on the trees to interfere with the pesticide application. While dormant season applications help to keep destructive pests under control throughout the growing season, the organophosphate (OP) pesticides used as dormant sprays (such as diazinon, methidathion, and chlorpyrifos) can cause problems when pesticide drift occurs during an application, or when rain washes residues into the Central Valley rivers and streams.

DPR scientists analyzed data from surface water studies conducted between 1991 and 2001 and found that dormant spray insecticides were frequently detected in the watersheds of the Sacramento and San Joaquin rivers, particularly in tributaries. The dormant spray pesticide

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

diazinon yielded the highest detections; these detections coincided with the flooding of orchards during winter rains. Small aquatic test invertebrates were killed when exposed for even short periods to the OP levels detected in the two watersheds.

Because state and federal laws prohibit the discharge of substances that make rivers toxic to aquatic life, the detections led the Central Valley Regional Water Quality Control Board to declare this problem a violation of its Basin Plan water quality standard for toxicity. In 1998, the State placed the Sacramento and San Joaquin Rivers and the associated Delta/Estuary on the Clean Water Act 303(d) list of impaired waterways, partly because of elevated OP levels originating from dormant spray runoff or drift. These listings require that specific measures be taken to eliminate harmful residues in the watersheds.

Under a 1996 settlement agreement between the Sacramento Valley Toxics Campaign (SVTC) and the State and Central Valley Water Resources Control Boards, DPR agreed to resolve water quality problems caused by dormant sprays. Rather than immediately adopt mandatory restrictions, DPR launched a five-year plan during which DPR worked with growers to determine if voluntary practices could be developed that would effectively reduce the movement of dormant spray pesticides to surface waters.

Under the SVTC settlement agreement, DPR agreed to initiate regulatory measures if water quality improvements were not made. Monitoring performed between 1991 and 2001 revealed little progress in reducing aquatic toxicity and voluntary measures were deemed insufficient to resolve water quality problems. In fact, recent winter dormant season monitoring (1997-2000) revealed significant toxicity of aquatic test invertebrates in water samples taken from tributaries to both the Sacramento and San Joaquin Rivers.

This proposed action would adopt dormant spray contamination prevention regulations focusing on mitigating surface water contamination. Language pertaining to dormant spray contamination prevention will be added to 3 CCR in an effort to eliminate, or limit to the extent possible, direct primary drift of dormant spray insecticides into water bodies. The definitions "dormant oil," "dormant insecticide," "hydrologically isolated site," and "sensitive aquatic site" will be added to section 6000 to clarify the new language.

The proposed addition of section 6960 would restrict ground and aerial applications of dormant insecticides to areas 100 feet from any irrigation or drainage ditch, canal, or other body of water in which the presence of dormant insecticides could adversely impact any of the beneficial uses of the waters of the state specified in Water Code section 13050(f). This measure is intended to reduce problems caused by both runoff and drift. (While a 100-foot buffer will not eliminate all contamination from drift, this distance will provide a reasonable reduction in problems caused by drift.) Provisions for periods/circumstances under which dormant insecticides may or may not be applied are included in the proposed regulations. Specific wind speeds and weather conditions that may impact dormant insecticide applications are also covered in detail.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

County agricultural commissioner (CAC) offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR negotiates an annual work plan with the CACs for enforcement activities.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has determined that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states; however, there will be additional economic impacts beyond that already incurred by businesses.

While the crop management changes anticipated by the proposed regulation are not expected to result in noticeable shifts in crop selection, some growers--or property operators--may see minor increases in operating costs. The requirement for the property operator to obtain a written recommendation from a licensed pest control adviser prior to dormant insecticide application will increase the property operator's costs if they do not already retain this service. In addition, some property operators--specifically growers with smaller fields adjacent to sensitive aquatic

sites--may find their operation's production capability adversely impacted if they cannot provide the required 100-foot buffer zone, or if meeting the buffer zone requirement means a portion of their orchard or field cannot be treated.

The new regulation's impact on application frequency could negatively impact costs to the grower in terms of crop loss and/or the need to purchase more expensive or greater quantities of pesticides annually. For instance, because the window of opportunity for dormant insecticide applications may be limited by the need to meet wind speed and weather condition requirements, a grower may need to compensate for "missed" applications by making more pesticide applications later in the season, possibly at greater expense. Or, in some cases, important applications may be skipped because application conditions are not appropriate, thus enabling pests to cause damage.

The proposed regulation should not have a significant impact on the ability of California businesses to compete with businesses in other states, since the growers potentially affected have alternative approaches to crop management available to them. Any increase in costs will be minor relative to normal market fluctuations. In fact, this may have less significance for growers who have an integrated pest management strategy.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

The regulation may, however, increase the demand for evaluations by pest control operators since property operators will now be required to obtain the written recommendation of a licensed pest control adviser prior to making a dormant insecticide application. Thus, there may be an increase in the number of recommendations written by pest control operators; however, this probably will not lead to growth in employment since many pest control operators already work under contract with growers or chemical companies to provide advice for a specific farm.

Any additional costs resulting from changes in application practices or pesticides selected should not have a significant adverse economic impact on growers. Pesticide dealers currently selling dormant insecticides may experience some decrease in sales that might be offset by increased sales of alternative substituted chemicals.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456, 11052, 12111, 12781, 12976, 12981, 13145, 14001, and 14005.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 11401.2, 11408, 11410, 11501, 11701, 11702(b), 11704, 11708(a), 12042(f), 12103, 12971, 12972, 12973, 12980, 12981, 13145, 13146, and 14006.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons and/or the proposed text of the regulation, and inquiries regarding the rulemaking file may be directed to:

Cheryl Langley, Senior Environmental Research Scientist
Department of Pesticide Regulation
Environmental Monitoring Branch
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 324-4273

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Regulations
(916) 445-3991

Questions on the substance of the proposed regulatory action may be directed to:

John S. Sanders, Ph.D., Chief
Environmental Monitoring Branch
Department of Pesticide Regulation
(916) 324-4100

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director

Date